



CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 05/23/00

AGENDA ITEM 4

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Appeal of Planning Commission Denial Action of Variance 00-180-09 and Site Plan Review 00-130-02 Previously Approved by Planning Director – Paul Lopez of Standard Pacific of Northern California (Applicant/Owner) - Request Site Plan Approval to Construct 11 Single-Family Residences and a 5' Side Street Fence Setback Variance for Parcel A – The project is on Ruus Road and the Extension of Panjon Street

RECOMMENDATION:

It is recommended that the City Council deny the appeal and uphold the action of the Planning Commission and the Planning Director.

DISCUSSION:

On April 22, 1999, the Planning Commission approved the Tentative Subdivision Map (Tract 7099) for the City-owned 11-lot subdivision and found that the project is categorically exempt from environmental review. Subsequently, Standard Pacific of Northern California was selected by the City to acquire the property, to build its single-family homes, and to construct the extension of Panjon Street. The selection process included the consideration that the design of the homes would be consistent with the homes found in Standard Pacific's Twin Bridges project. (See Exhibit D for house designs.)

On March 10, 2000, the Planning Director approved the site plan review for the two-story homes within the subdivision, as well as a variance to allow a 5-foot side-yard setback for a fence on a small excess parcel merged with an existing residence facing Coleridge Avenue. On March 17, 2000, Glen Moss, attorney, filed an appeal of the administratively approved site plan review on behalf of Mary Byars, 607 Eastwood Way. See Exhibit C for appeal letter. Mrs. Byars' residence is at the corner of Eastwood Way and Brighton Street, adjacent to the project site. It backs up to the project's lot nos. 10 and 11, as reflected on the attached map (Exhibit A).

The Planning Commission considered the appeal at their April 27, 2000 meeting. The appellant and her attorney both spoke on the matter and explained that the appeal was based on drainage, privacy, fencing and contamination issues. No one else from the public offered testimony. The

Commission voted 4:1 to deny the appeal, approve the site plan and variance, and find the project categorically exempt from CEQA.

In the appeal letter of the Planning Commission's action (attached as Exhibit C), the attorney for the appellant makes four arguments as the basis for the appeal of the Planning Director's and the Planning Commission's actions. They relate to environmental review, drainage, privacy, and fencing.

With regard to environmental review, public participation is an essential part of the California Environmental Quality Act (CEQA) Guidelines because it can result in providing the public hearing body with information from a variety of sources. When the Planning Commission approved the tentative map during a public hearing, they made the finding that the project is categorically exempt from CEQA, and no additional information was received or objections raised. In addition, that finding was not challenged within the legal time (six months) established for a challenge. Even though the period for challenge of the finding has passed, the public hearing body may choose to consider additional information if there is legitimate concern that there could be adverse impacts as a result of the construction of the homes.

In the appeal letter of the Planning Commission's action, the appellant claims an environmental impact report is necessary because "toxic chemicals" were sprayed by the Hayward Unified School District (HUSD) in the 1960s and 1970s that killed plant life. However, at the Planning Commission hearing there was no evidence provided that toxic spraying occurred or that, if it did, there would be reason to believe that toxicity remained 30 to 40 years later. As such the Planning Commission denied the appeal. Environmental impact reports are required only when significant adverse impacts are identified that, with some probability, cannot be mitigated, which is not typically the case when hazardous materials are involved; and a landmark court case denied a challenge to a CEQA review where housing was to be constructed where hazardous materials were present, with the finding that the project did not create the impact.

Since the Planning Commission hearing, staff contacted HUSD in an effort to determine if they have records from the 1960s and 1970s that would indicate what type of spraying might have occurred. Staff spoke to Larry Lepore, the former head of the facilities department, who had no knowledge of the type of spray that might have been used that long ago. Mr. Lepore contacted a fellow HUSD worker who has resided on Eastwood Way since her house was constructed, and that individual indicated she is unaware of any spraying by HUSD along her rear property line that resulted in the loss of plants. In addition, a "Phase One Environmental Site Assessment" was prepared for the site by Engeo Incorporated which states, *"The site reconnaissance and records review did not find documentation or physical evidence of soil or ground-water impairments associated with the use of the property....This Assessment has revealed no evidence of recognized environmental conditions associated with the property."*

Regarding the drainage issue, Standard Pacific's civil engineer, at the direction of staff, designed a drainage system for the new housing development that results in runoff from the front part of the new parcels to drain toward Panjon Street and the runoff on the back portions of the new

parcels draining toward the rear of the properties and then down to Ruus Road. The drainage system at the back of the parcels is designed to also accept drainage from the abutting parcels to the south, including the appellant's. This drainage design requires the developer to record an easement to provide for continuing acceptance of drainage from adjacent parcels. The appellant's drainage system will not be impaired by the new drainage system, as the grade at the rear of the new development is equal to or less than the adjacent development to the south. This drainage plan has been approved by the City Engineer and has been explained to the appellant's attorney.

With respect to the privacy issue, the only second floor windows facing the rear property line are the opaque bathroom window and a master bedroom window. There are also windows in the first floor dining room that extend to the second, which are too high to be a privacy issue. In order to reduce privacy impacts, the homes are proposed to be set back between 24 and 30 feet from the rear property line, where a minimum of 20 feet is required, and evergreen trees are proposed to be planted in rear yards. A similar method is found at the Twin Bridges development where homes back up to the one-story homes in Fairway Park. Prior to the Planning Commission meeting, the appellant's attorney had indicated in writing that trees in the rear yards would be acceptable. However, in the letter appealing the Planning Commission's action, the appellant is now seeking to raise the windows to a height that would prevent residents from looking down into neighboring yards, in addition to installing trees. However, the Uniform Building Code requires bedroom windows to be 44 inches from the floor so as to serve as an egress in case of fire.

The appellant requests that the developer (1) take down her masonry wall, which includes a gate, and which is currently located parallel to and 3 feet inside her rear property line (with side walls extending to the rear property line), (2) backfill her property to raise the level at the rear property line to be equal with the remainder of her back yard, and (3) rebuild the masonry wall along the rear property line. Her expressed reasoning is that the City required her to locate the wall 3 feet inside her property and that to leave it in its current location and for the developer to install a new wood fence along the common property line, would create a 3-foot gap that might hide vandals and harbor undesirable animals and trash. City records do not show that the City required the property owner to install the appellant's masonry wall 3 feet from her rear property line. Records show that in 1971 the property owner requested a permit for a 6-foot-high masonry wall. A note on those plans indicates "*Present wall started six years ago. The foundation and four rows of blocks and block braces are in at present.*" Staff can only speculate that the wall was located 3 feet from the rear property line in order to maintain access to the rear of the wall within the confines of the appellant's property.

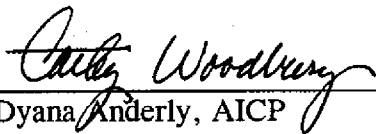
The developer has volunteered to backfill the appellant's property if the property owner razes the wall herself. However, he objects to installing a new masonry wall along her rear property line since a masonry wall is inconsistent with City policies which call for wood fences between residential properties, the treatment of her property would differ from the other residences backing onto the new development, and additional costs would be incurred for which he should not be responsible. The 3-foot gap between the masonry wall and the property line that the appellant refers to is already there; so if the appellant's masonry wall remains in its current

location, there would be no difference from the current condition except that the chain link fence currently along the property line would be replaced with a new wood fence.

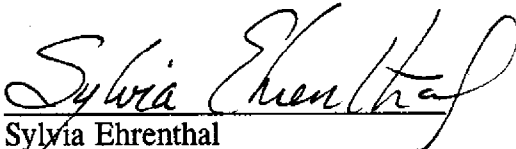
Given the lack of evidence that would support the argument that toxic chemicals purportedly sprayed approximately 30 years ago remain and would do harm to new residents, staff believes that no further consideration need be given to this issue. In addition, drainage associated with the new development will not impact existing drainage flow from parcels to the south; privacy issues have been reasonably addressed by additional setbacks and trees; and, in staff's opinion, there are no circumstances created by the development that should result in relocating a masonry wall.

No objections were raised regarding the variance to locate a fence to within 5 feet of a side street yard in conjunction with a left-over portion of the tract to be merged with an existing parcel that faces Coleridge Street.

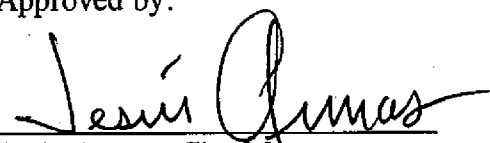
Prepared by:


for Cathy Woodbury
Dyana Anderly, AICP
Planning Manager

Recommended by:


Sylvia Ehrenthal
Sylvia Ehrenthal
Director of Community and Economic Development

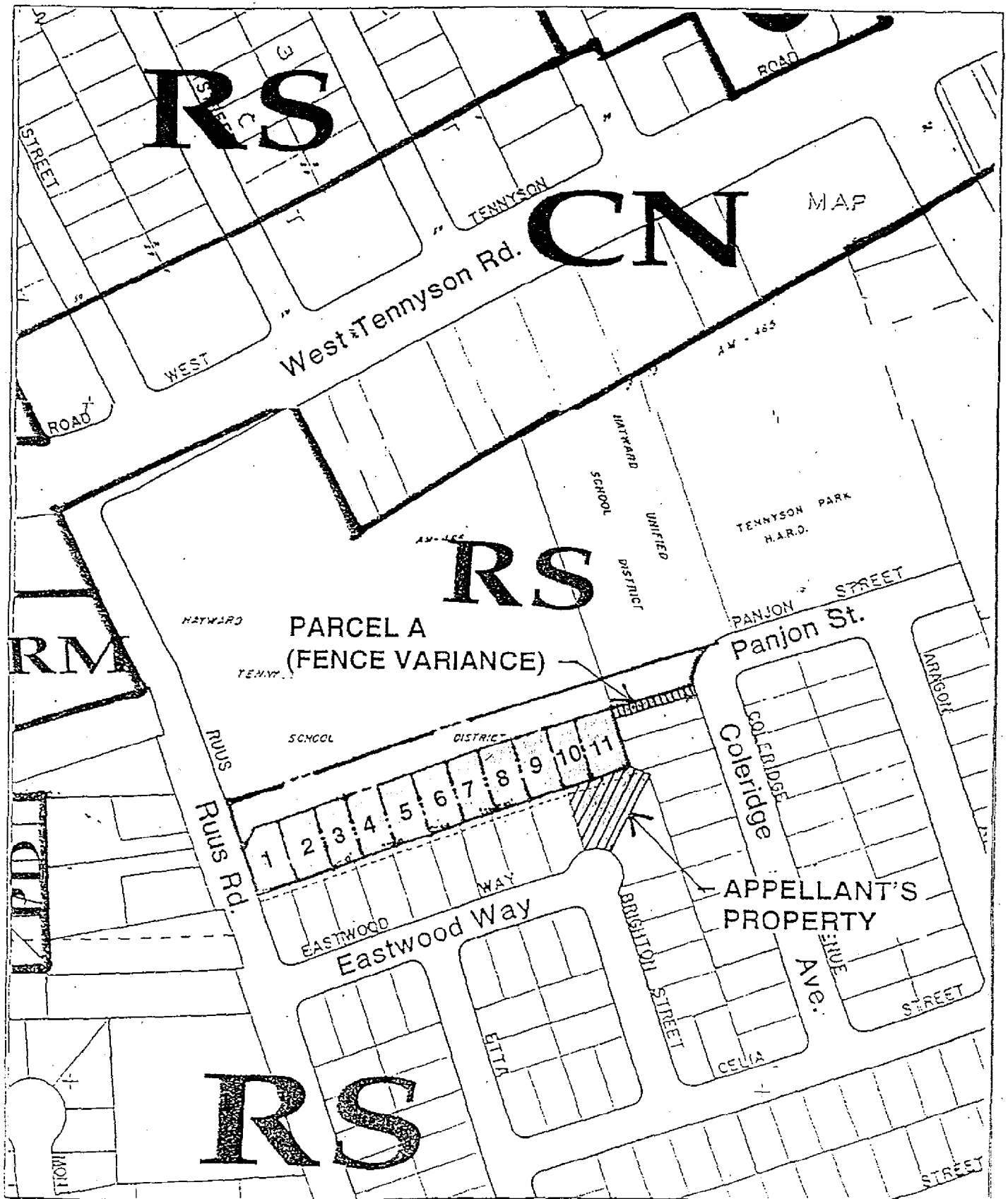
Approved by:


Jesús Armas
Jesús Armas, City Manager

Attachments:

Exhibit A	Area Map
Exhibit B	Planning Commission Draft Minutes and Staff Report, dated 4/27/00
Exhibit C	Appeal Letters of 5/2/00 and 3/17/00
Exhibit D	Project Plans
	Draft Resolution

5.18.00



AREA MAP - SPR 00-130-02/VAR 00-180-09

EXHIBIT A

PUBLIC HEARINGS

1. **Variance 00-180-09 and Appeal from Site Plan Review 00-130-02 Previously Approved by Planning Director - Paul Lopez of Standard Pacific of Northern California (Applicant/Owner):** Request Site Plan Approval to Construct 11 Single-Family Residences on 2.25 Acres and a Variance for a 5' Side Street Fence Setback for Parcel A where a Minimum of 10 Feet is Required - The Property is on Ruus Road and the Extension of Panjon Street in the Single-Family Residential (RS) District

Associate Planner Block made the presentation and described the project. The homes are modeled after the Twin Bridges home. He described the appeal which was based on privacy concerns, in that the second stories are near one-story homes already in the neighborhood, adequate drainage, improper environmental review, and boundary-line problems. He responded to each of the concerns. Staff recommended denying the appeal, and approving the site plan review as well as the variance. He reviewed the three public comments received.

Commissioner Halliday asked about the need for the variance.

Associate Planner Block explained that the variance is consistent with other fencing on the Panjon Street.

Commissioner Williams asked about the setbacks and the privacy issue, as well as the disruption of long-time neighbors. He suggested the possibility of no windows on that side facing the existing homes since the trees may not be adequate mitigation.

Commissioner Bennett asked about CEQA and the wildlife issue, and whether there would be any significant species or waterways. Staff indicated there were no environmental issues associated with the use of the property that they are aware of.

The public hearing opened at 7:52 p.m.

Glen Moss, 1297 B Street, Attorney for the applicant, explained the problems the appellant had enumerated in her appeal. He listed a number of trees, which could be planted as an alternative to those chosen by staff. He suggested that the developer be required to move the existing wall so that it will be consistent throughout the neighborhood. He then explained the drainage problems that will result from what the developer is proposing. The environmental review question arose because of alleged contamination on the developer's side of the fence. He also agreed with Commissioner Williams that there should be no windows on the neighbor's side of the development.

Commissioner Halliday asked what the contamination of the soil might have been. She was told by the appellant's attorney that it was as a result of spraying on the elementary school grounds. Mrs. Byars, the appellant, said that 20 years ago, she had received a report from Stoner Labs that there was contamination on the site.

Mary Byars, appellant, P.O.Box 337, Mt. Eden, explained that the School District sprayed a

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REGULAR MEETING OF THE PLANNING
COMMISSION, CITY OF HAYWARD, Council
Chambers

Thursday, April 27, 2000, 7:30 P.M.

777 "B" Street, Hayward, CA 94541

substance on their property which subsequently killed all of her trees. She added that she was required by the City to build her a wall three feet from the rear property line, and that the 3-foot increase in grade will be a problem for drainage onto her property. She said she would like the developer to relocate her wall at their expense. The wall she now has is three feet from the property line and a drainage problem would be created.

Acting Chairperson Halliday then asked staff to respond to these comments.

Planning Manager Anderly responded that the new development will drain toward the street and toward the rear of the parcels. She indicated that there is no information in City's records to support Mrs. Byars' various contentions. The City does have building permit plans on file for the wall, which appeared to have been started before a building permit was requested.

Paul Lopez, Standard Pacific 3825 Hopyard Road, #195, Pleasanton, said the sale of the property was conditioned by the City with the proposed home designs, so it is too late to change the plans for windows as the plans are already approved. He also addressed the drainage on the property. He added that nothing had been disclosed about contamination and suggested that, with enough time, it may have been washed away. He said they were assured that the property was clean when they purchased it. As to continuing the fence, he indicated that taking down Mrs. Byars' wall would be gratuitous.

Ken Miller, Standard Pacific, 1676 North Callel Boulevard, #200, Walnut Creek, agreed that Standard Pacific had no knowledge of any contamination.

The Public Hearing closed at 8:36 p.m.

Commissioner Bennett said she had listened to the concerns but **moved**, seconded by Commissioner Zermeno, all of the staff recommendations, including denying the appeal.

Commissioner Williams said he still had a few issues with the nature of the administrative approval, and added that he felt Mrs. Byars had a legitimate concern. He noted that he was still concerned regarding her issues of contamination, drainage and privacy.

Commissioner Bogue asked for further information regarding the drainage on the parcel. Planning Manager Anderly indicated that drainage that was accepted by the adjacent property would continue to be accepted.

Acting Chairperson Halliday suggested that staff might still work with the developer on the type of trees planted between the project and the neighbors.

Commissioner Zermeno asked whether any other neighbors had expressed concern to the City.

Associate Planner Block said he had only two comments from neighbors, one being concerned

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about privacy and one with general questions.

Commissioner Bogue asked whether the contamination could be a basis for appeal.

Assistant City Attorney Nakatsu said the City records of the property have no indication that there is contamination.

The motion carried by the following vote:

AYES: COMMISSIONERS Bennett, Bogue, Halliday,
Zermeño

NOES: COMMISSIONERS Williams

ABSENT: COMMISSIONER Caveglia
CHAIRPERSON Fish

ABSTAIN: None

2. ~~Variance No. 00-180-03 – Carlos & Rosamaria Faz (Applicant/Owner): Request to Exceed the Maximum Lot Coverage of 40 Percent (to 41.7 Percent) and to Reduce the Required Side Yard From 7.5 Feet to 6 Feet - The Project Location is 30452 Midlothian Way at Hoylake Street (Fairway Park) in the Single-Family Residential (RS) District~~

~~Associate Planner Patenaud described the neighborhood and the property layout. He indicated that by changing the footprint of the house to exceed the maximum lot coverage, approval of the variance might be precedent setting.~~

~~The Public Hearing Opened at 8:57 p.m.~~

~~Carlos Faz, 30452 Midlothian Way, read from a letter he sent to the Staff appealing the variance. He said since it is a corner lot it needs special treatment.~~

~~The Public Hearing Closed at 9:03 p.m.~~

~~Commissioner Bogue moved, seconded by Commissioner Zermeño, to approve the variance with the condition that the entry way be part of the plan in order to balance the size of the addition. He also suggested they should develop a landscaping plan. He based his motion on findings for approval.~~

~~Commissioner Zermeño added that this addition would improve the homes in that area.~~

~~Commissioner Bennett expressed concern that, if approved, 21 separate properties could apply for a similar variance. As a result, she said she would not support the motion.~~

~~Acting Chairperson Halliday said although this might set a precedent, each application is considered individually and then decided on its own merit.~~

~~Assistant City Attorney Nakatsu concurred and added that each application would be reviewed~~

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CITY OF HAYWARD AGENDA REPORT

Planning Commission

Meeting Date 04/27/00

Agenda Item 1

TO: Planning Commission

FROM: Philip W. Block, Associate Planner

SUBJECT: Variance 00-180-09 and Appeal from Site Plan Review 00-130-02 previously approved by Planning Director – Paul Lopez of Standard Pacific of Northern California (Applicant/Owner): Request Site Plan Approval to Construct 11 Single Family Residences on 2.25 Acres and a 5' Side Street Fence Setback Variance for Parcel A – The Property is on Ruus Road and the Extension of Panjon Street

RECOMMENDATION:

The staff recommends that the Planning Commission take the following actions:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA).
2. Deny the Appeal of Site Plan Review 00-130-02.
3. Approve Site Plan Review 00-130-02 subject to the recommended conditions of approval and the attached findings.
4. Approve Variance 00-180-09 based on the attached findings.

DISCUSSION:

Surrounding Area

The project is located on Ruus Road and the extension of Panjon Street between Ruus Road and Huntwood Avenue. The property abuts single-family residences to the south and Tennyson Park and the future Boys and Girls club to the north. The site is zoned RS (single-family residential) district and is within the Tennyson-Alquire Neighborhood. See Attachment A area map.

Background

The property was acquired by the City to provide for the extension of Panjon Street. Standard Pacific of Northern California ultimately acquired the property from the City to build its Ashwood Park single family residential subdivision. On April 22, 1999 the Planning Commission approved the Tentative Subdivision Map (Tract 7099) for this 11-lot subdivision. At this time the applicant is concurrently completing Final Subdivision Map requirements. Once completed, the Final Subdivision Map for Ashwood Park will be presented to the City Council for review and approval.

The extension of Panjon Street to connect Huntwood Avenue and Ruus Road will improve traffic circulation within the neighborhood. It will also provide vehicular and pedestrian access to Tennyson Park and the future Boys and Girls Club.

On March 10, 2000 the Planning Director approved the Ashwood Park Site Plan Review 00-130-02 subject to 21 conditions. See Attachment B for the Conditions of Approval. On March 17, 2000, Glen Moss, attorney, filed an appeal of the administratively approved Site Plan Review on behalf of Mary Byars, 607 Eastwood Way. See Attachment C for appeal letter. Mrs. Byars' residence is at the corner of Eastwood Way and Brighton Street, adjacent to the project site. It backs up to the project's lots # 10 and 11.

The purpose of this agenda item is for the Planning Commission to consider the staff-proposed fence variance and the appeal of the administratively approved Site Plan Review for the 11 lot Ashland Park Subdivision.

Project/Site Plan

The applicant has recently completed the Twin Bridges residential development at the southwest corner of West Industrial Parkway and Mission Boulevard. The house models proposed for Ashwood Park are some of the same designs used for Twin Bridges. All proposed 11 homes are two story and have two-car garages. Seven building plans with different floor plans and elevations are proposed for Ashwood Park. See enclosures for proposed site plan/conceptual landscape plan, elevations and floor plan. Attachment D contains photographs of one of the elevations.

Stucco exterior siding is used for all the home models. All elevations include covered decorative entryways, with some of the plans including covered porches. All house models have stepped or transitional front elevations. The elevations include the use of decorative windows and trim. Concrete tile is the proposed roof material and all house models include significant roof articulations and offsets. A variety of building color schemes are proposed, consisting of earth tone and muted colors with accent and trim colors. The front yards will be landscaped with sodded lawns, ground covers, shrubs and trees in addition to the street trees. Parcel A was created as part of the Ashwood Park Subdivision. It will be landscaped with trees and shrubs.

Variance

Parcel A is a long narrow strip of land approximately 125' x 13' between the existing single family residence at the southwest corner of Coleridge Avenue and Panjon Street extended. Parcel A will become a planter strip with trees and shrubs, as well as, allow for a 5' expansion of the fenced yard of the existing adjacent single family dwelling. It is the left over property between what will be the new sidewalk along the south side of Panjon Street extended and the existing fence along the north property line of the above mentioned single family residence. The City has transferred this otherwise unusable remnant property (Parcel A of APN 465-01-9-3) to the adjacent property owner.

The minimum side street yard requirement is 10' (Zon. Ord. Sec. 10-1.230). Therefore normally, the Parcel A 6' fence would need to be set back 10'. In this location the staff believes a 5' setback is appropriate and that the necessary variance findings can be made.

Granting a 5' variance will still allow a 5' planter strip between the new fence and sidewalk. This is sufficient area for shrubs and trees. This side street yard enhanced landscaping will compensate for the reduced size landscape area. Also, Tennyson Park across Panjon Street extended provides considerable landscaped open space to compensate for the reduced street side setback.

The fence is limited in length and does not adversely affect visibility at the intersection of Coleridge Avenue and Panjon Street extended. The variance does not constitute a grant of special privilege. It is not inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated. There are a number of side street yard 6' fences in the neighborhood that are constructed directly adjacent to the sidewalk and 6' fences situated 5' from Panjon Street, approved as part of a subdivision constructed within the past several years.

Site Plan Review Appeal

The appellant has expressed concern about inadequate drainage and provision for the removal of water, improper Categorical Exemption from CEQA, boundary line problems and privacy issues. City staff has had a number of meetings and conversations with the appellant's attorney and the developer. The meetings have been helpful in trying to resolve the appellant's concerns.

The appellant has raised four points in their appeal letter (Attachment C):

1. Inadequate drainage and provision for the removal of waste water

Staff Comment: This is not an issue in that the applicant will construct a drainage swale in the rear yards of the 11 new lots to accept drainage from the abutting properties as well as the new subdivision. The future homeowners of the new development will be responsible for maintaining these drainage easements.

2. Improper Categorical Exemption from CEQA

Staff Comment: Section 15332 Class 32 of the California Environmental Quality Act (CEQA) allows exemptions for infill projects such as this. The project is consistent with Class 32 requirements as follows:

- a) It is consistent with the General Plan designation and policies and Zoning Ordinance including designation.
- b) The site is less than 5 acres.
- c) The site has no value as a habitat for endangered species.
- d) The project would not cause significant effects on water quality, air quality, noise or traffic.
- e) The site can be served with necessary public services and utilities.

Also, on April 22, 1999 the Planning Commission, in approving the Ashwood Park Tentative Subdivision Map (Track 7099, found that the subdivision was categorically exempt from CEQA.

3. Boundary line problems

Staff Comment: A property survey confirms that the new development will not encroach on adjoining parcels.

4. Privacy Concerns

Staff Comments: The new homes will be set back from the rear property line between 24 and 30 feet. Consistent with privacy measures undertaken in the Twin Bridges project, the developer proposes to plant evergreen trees within rear yards to form a visual screen.

Zoning and Neighborhood Plan Consistency

The applicant's project is consistent with the required setbacks, lot coverage, building height and the minimum design and performance standards for the Single-Family Residential (RS) zone district. It is also consistent with the City's Design Guidelines.

Environmental Review

On April 22, 1999 the Planning Commission, in approving the Ashwood Park Tentative Subdivision Map (Tract 7099), found that the subdivision was categorically exempt from the provisions of the California Environmental Quality Act (CEQA). The proposal is defined as a project under parameters set forth in the California Environmental Quality Act (CEQA) Guidelines; however, it qualifies for a Categorical Exemption under Section 15332 Class 32 infill development. Specifically it is consistent with the General Plan and Zoning Ordinance, it is under 5 acres, it does not adversely effect the habitat of endangered species, it does not cause significant adverse effects on traffic, noise, water quality or air quality, and necessary public services and utilities are available.

Public Notice

On February 7, 2000 a Referral Notice was mailed to every property owner and occupant within 300 feet of the subject site, based on the most current data available. No comments were received.

On March 10, 2000 a Notice of Decision was mailed to each property owner and occupant within 300 feet of the subject site, based on the most current data available. Two comments were received. One was the written appeal of the administrative Site Plan Review approval on behalf of Mrs. Mary Buyars (see Attachment C). The other comment was from a neighboring property owner, who said he saw advantages and disadvantages to having the project, but that he was not opposed to it.

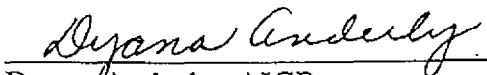
On April 17, 2000 a Notice of Public Hearing for the Planning Commission meeting was mailed to every property owner and occupant within 300 feet of the subject site, based on the most current data available.

Prepared by:



Philip W. Block, AICP
Associate Planner

Approved by:



Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area Map
 - B. Conditions of Approval
 - C. Appeal Letter
 - D. Photographs of elevation
 - E. Findings of Approval - Variance
 - F. Findings of Approval - Site Plan Review
- Project Plans

CONDITIONS OF APPROVAL
Site Plan Review 00-130-02
Panjon Street extended at Ruus Road

1. The site plan shall become void on March 10, 2001, unless, prior to that time, a building permit application has been accepted for processing by the Building Official or an extension has been approved.
2. Unless otherwise indicated, all conditions shall be met prior to occupancy.

Architecture

3. All side and rear elevations facing a street shall include enhanced architectural details.
4. Roof materials shall be as shown in Exhibit A (photographs) and exterior colors and finishes shall be as shown in Exhibit B (color sheets).

Fire Department Requirements

5. Fire hydrants and roads shall be installed to meet City of Hayward and UFC requirements. Fire hydrants are required to be installed every 400 feet and be capable of flows of 1500 GPM @ 20 PSI for a 2- hour duration.
6. All weather roads shall be installed and engineered to withstand 50,000 lbs. GVW of fire apparatus.

Note: Prior to construction with combustible materials all-weather roads and water supply shall be in service.

7. Minimum of Class C type roofing materials required for each dwelling.
8. Spark arrestors required on each chimney.
9. 6" address or 4" self-illuminated address required.
10. Smoke detectors required per the UBC.
11. Hazardous Materials office requests proof that the site has been remediated from, any chemicals/hazardous materials.

Landscaping

12. Prior to issuance of the first building permit, detailed landscaping and irrigation plans for all front yards and Parcel "A" shall be prepared by a licensed

landscape architect and submitted for review and approval by the City. Landscaping and irrigation plans shall comply with the City's Water Efficient Landscape Ordinance.

13. Front yards shall be limited to a maximum of 50% Fescue sod.
14. One 15-gallon street tree shall be planted 6 feet behind the sidewalk on each lot and on Parcel "A" for every 50 feet of frontage, or portion thereof. Trees shall be planted according to the City Standard Detail Sd-122.
15. One 24" box tree shall be planted in each front yard as mitigation for the three trees removed.
16. Landscaping and street trees shall be installed on Parcel A prior to issuance of the occupancy permit for the first dwelling unit,
17. Front yard landscaping and street trees shall be installed according to approved plans prior to occupancy of each lot. A Certificate of Substantial Completion, and an Irrigation Schedule shall be submitted prior to the issuance of a Certificate of Occupancy.
18. The mailboxes for all units shall be located next to the public street and grouped together where appropriate. Decorative posts or pilasters shall be used to support the mailboxes. The Planning Director shall approve the design.

Fences

19. Prior to issuance of the first building permit, a fencing plan showing the location and details of all lot line, perimeter and good neighbor fences and walls shall be submitted for review and approval by the Planning Director.

Miscellaneous

20. The drainage plan shall be approved by the City Engineer prior to issuance of any building permits.
21. Second stories are to be architecturally attractive and sensitive to the privacy of adjoining residents in the placement of windows and balconies.
22. *Two 15 gal. Podocarpus gracilior (Fern Pine) trees shall be planted in each back yard of lots 10 and 11 and one 15 gal. Podocarpus in lots 1 - 9 near the rear fences prior to occupancy of each lot.*

FINDINGS OF APPROVAL
Variance 00-180-09 to vary 5 feet from the
10 foot side street fence setback for
Parcel A of Tract 7099
Ruus Road and the extension of Panjon Street
City of Hayward (Applicant)
City of Hayward (Owner)

1. There are special circumstances applicable to the size and location of parcel A because it is the remaining property when Panjon Street is extended between Tennyson Park and the existing single-family home at the southwest corner of Coleridge Avenue and Panjon Street extended.
2. The development proposal which this variance is part of is defined as a project under parameters set forth in the California Environmental Quality Act (CEQA) Guidelines; however, it qualifies for a Categorical Exemption under Section 15332 Class 32 in-fill development. Specifically it is consistent with the General Plan and Zoning Ordinance, it is under 5 acres, it does not adversely effect the habitat of endangered species, it does not cause significant adverse effects on traffic, noise, water quality or air quality, and necessary public services and utilities are available.
3. Strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other properties in the vicinity under the same zoning classification. There are a number of single family residences in the neighborhood with side street yard 6-foot fences built to within 5 feet of side street property lines and the requested variance also provides for a 5-foot setback from the sidewalk.
4. The variance does not constitute a grant of a special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated, in that adequate landscaping, space for the relocated fence and open space is provided, and there will be no adverse impacts on surrounding uses.

FINDINGS OF APPROVAL

Site Plan Review 00-130-for the 11 single-family home Ashwood Park Subdivision
Ruus Road and the extension of Panjon Street
Paul Lopez of Standard Pacific of Northern California (Applicant)
Standard Pacific of Northern California (Owner)

1. The design of the homes for the previously approved subdivision, as conditioned, are compatible with the adjacent single family residences, Tennyson Park and the future Boys and Girls Club, and will be an attractive addition to the neighborhood.
2. The proposed development takes into consideration physical and environmental constraints as the drainage system for the site plans was designed to accept drainage from adjacent properties to the south and proposed landscaping will integrate the project into the surrounding area. Trees will be added along the rear yard fences to form a visual screen for added privacy.
3. The project complies with the intent of City development policies and regulations, specifically design guidelines in that the interesting roof lines are proposed, the garages are secondary to the design of the dwelling, and privacy of adjacent homes is provided by sensitive window placement and a landscape buffer.
4. The development, as conditioned, will be operated in a manner determined to be acceptable and compatible with surrounding development, given that Uniform Building Code requirements must be met and a covenant will be filed requiring property owner to maintain the drainage swale at the rear of the property so as to insure adequate drainage for the new and adjacent parcels.
5. That the proposed detached single-family homes are consistent with the Zoning Ordinance, Design Guidelines and Tennyson-Alquire Neighborhood Plan Residential Development Standards.

GLEN L. MOSS
ANN MURPHY

MOSS & MURPHY
ATTORNEYS AT LAW
1297 B STREET
HAYWARD, CALIFORNIA 94541
(510) 583-1155

EXHIBIT C

PLANNING DIVISION

May 2, 2000

City of Hayward
777 B Street
Hayward, CA 94541-5007

Re: NOTICE OF APPEAL TO CITY COUNCIL
APRIL 27 2000 PLANNING COMMISSION
AGENDA ITEM 1.

Dear Clerk, City of Hayward and Honorable Members of City Council:

Ms. Mary Byars hereby appeals to the City Council the decision of the Planning Commission which approved Variance 00 189 09 and Appeal from Site Plan Review 00 130 02 approved by Planning Director. These items represented item 1 on the April 27 2000 agenda. Mary Byars and I appeared at this meeting. In response to the request of the City, we introduced a copy of Letters Testamentary establishing that Ms. Byars is serving as the Administrator With Will Annexed of the Estate of her deceased husband, George Byars. We ask that the Clerk forward the Certified Copy of these Letters that were supplied at the Planning Commission meeting pursuant to the request of Dyana Anderly, AICP, Planning Manager City of Hayward.

Ms. Byars owns and lives in the home immediately behind the project. Ms. Byars has owned and lived in this property since the mid 1950's.

The basis for the appeal are each of the following grounds:

1. Need for Environmental Impact Report:

In the 1960's and 1970's the school board sprayed parts of the field with toxic chemicals. These chemicals caused a row of juniper trees to die. The City demanded soil tests and the results were provided to Mr. Bill Scanlon, City Attorney. The results established substantial contaminants and toxic chemicals in the soil on the school site, near the border with Ms. Byars property.

At the Planning Commission meeting, the Deputy City Attorney present advised that she had not looked for the laboratory reports. Ms. Anderly, AICP, advised that this report was not in microfiche records she examined. Commission members opined that without written evidence of the prior problem, they felt obligated to ignore the testimony of Ms. Byars. However, two of the Commissioners asked the Deputy City Attorney if this problem would provide a proper basis for the reversal of the planning commission decision.

We hope to locate a copy of the report by checking with the school board, other public officials, or presenting testimony from other property owners who may be aware of the problem. At a minimum, we hope to present evidence of the row of dead junipers.

2. Drainage Problem:

At the Planning Commission the developer advised us of its proposal to put a "V" ditch along the property line, to collect water. This ditch suffers from two problems: First, it is three feet higher than the pre existing drains. There are five drains that pour substantial amounts of water from the Byars property to the school yard. The school yard is 3 feet lower than the Byars property. Thus, the water currently flows down hill.

The developer proposes to raise the grade, thereby burying the existing five drains. Moreover, these drains would undermine the "V" ditch since the force of the water would undermine the gravel under the ditch.

The existing drain situation was mandated by the City when it established the location for the existing retaining walls. Thus, the City should not be permitted to undermine its own approved plan.

We submit, that the developer must be required to connect the existing five drains to its drainage disposal system.

3. Privacy Concerns

At the Planning Commission meeting Commissioner Williams suggested requiring the new second story windows be modified. The modification would prevent the new neighbors from looking down into the back yards of the existing homes. Simply raising the second story windows to six feet to nine feet from two to five feet will achieve this goal. Such a change would entail minimal expense. Unfortunately, this suggestion was not even explored since the variances were granted.

Also, the current "trees" are a relatively ugly, fast growing ones that provide little privacy protection. Some other trees that will look better, and provide better privacy protection are: [1] Potacarpus Henkelii; [2] Cornus Capitata [Himalayan Dogwood]; [3] Pinus Pinea [Italian Pine or Stone Pine] or Pinus Canariensis [Canary Island Pine]

4. Fence problem

The City required Ms. Byars to install a concrete block fence three feet in from the property line. In addition to the "weep holes", there are the five major drains that drain over this three foot set back and down into the school yard. The developer proposes a

City of Hayward
May 2, 2000
Page three

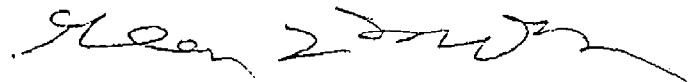
wooden fence at the property line. This will create a three foot "no mans land" for dumping trash, habitation by vagrants, and other unsavory conduct. We proposed that the developer be required to destroy the existing concrete block wall fence, above the existing grade. In addition, the developer should be required to put a "good neighbor" block wall fence at the property line.

We trust that the City Council will reverse the decision of the Planning Commission and remand this application for further review. Ms. Byars first notice of the subdivision being approved was the postcard she received advising her of her appeal rights. She had no input into the administrative approval. Also, the City staff has not contacted our landscape expert, Ann Murphy. On remand, we look forward to working with the developer and city staff to propose cost effective modifications that will improve the entire neighborhood.

We look forward to learning the date and time of the Council meeting that will consider this appeal.

Yours very truly,

MOSS & MURPHY



Glen L. Moss

GLM/ji
cc: Mary Byars
Paul Lopez
Dyana Anderly, AICP
Hayward.ltr

GLEN L. MOSS
ANN MURPHY

MOSS & MURPHY
ATTORNEYS AT LAW
1297 B STREET
HAYWARD, CALIFORNIA 94541
(510) 583-1155

HAND DELIVERED

March 17, 2000

City of Hayward
Planning Division
777 B Street
Hayward, CA 94541
Att: Phil Black

Re: Administrative Site Plan Review (SPR)00-130-02
Ruus Road/Panjon Street Project
Our Client: Mrs. Mary Byars
NOTICE OF APPEAL AND REQUEST FOR FORMAL HEARING

Dear Mr. Black:

Please consider this letter as a formal Notice of Appeal and Request for Formal Hearing before the Planning Commission of the tentative administrative approval of the above project. This office represents Mrs. Mary Byars. Ms. Byars owns the property which adjoins the project. We wish to appeal from the prospective approval of the project on the following grounds:

1. Inadequate Drainage and Provision for removal of Waste Water:

The present project ignores the substantial number of drains which cause water to flow from the Byars property at 607 Eastwood Way to the subject project. This water currently is disbursed on the open fields of the school and other quasi public uses being made of the land occupied by the proposed project.

Also, the project proposes to use a non-existent easement to remove the waste water. This easement was formally abandoned in approximately 1970. All the land occupied by this easement now belongs to the fee owners, such as Ms. Byars. She will not consent to the use of her land for these purposes.

2. Improper Categorical Exemption from CEQA:

The current project will exacerbate the water drainage problems in the area and cause changes in the ecological

RECEIVED

MAR 17 2000

balance of various forms of wildlife. Also, the deprivation of the open spaces and quasi public uses of this property prevents the project from being categorically exempt from CEQA. We submit that an Environmental Impact Report should be prepared so that the neighbors and governmental officials will know the true environmental costs of the project.

3. Boundary Line Problems:

The current fences are approximately three feet in from the property line which separates the instant project from the property owned and occupied by Ms. Byars as a single family residence. Ms. Byars intends to move the fence to the boundary. The current project attempts to occupy the property owned by Ms. Byars and her neighbors.

4. Privacy Concerns:

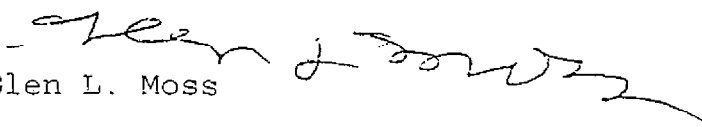
The instant project proposes massive homes that are about 20 to 30 feet high. In contrast, the surrounding homes are about half this height. In addition, the current plans call for the new homes views to be directly into the rear yards, bedrooms, and living areas of their neighbors. These design features of the new homes will substantially reduce the quiet enjoyment of the people occupying the existing homes. We submit that further design work and restrictions should be included in a final plan that will eliminate this problem.

For each of these reasons, the project should NOT be approved in its existing configuration. We look forward to discussing these concerns with the developer, planning staff, and other interested persons at the City. You may forward a copy of this appeal to the landowner, the developer, and their agents.

All inquiries and questions regarding these matters should be directed to this office and NOT to our client.

Yours very truly,

MOSS & MURPHY


Glen L. Moss

GLM/

cc: Ms. Mary Byars



STANDARD PACIFIC

A Division of Standard Pacific, Corp.

March 13, 2000
Phillip W. Block
Associate Planner
City of Hayward
RE: SPR 00-130-02 Ashwood Park

PLAN TWO ELEVATION D

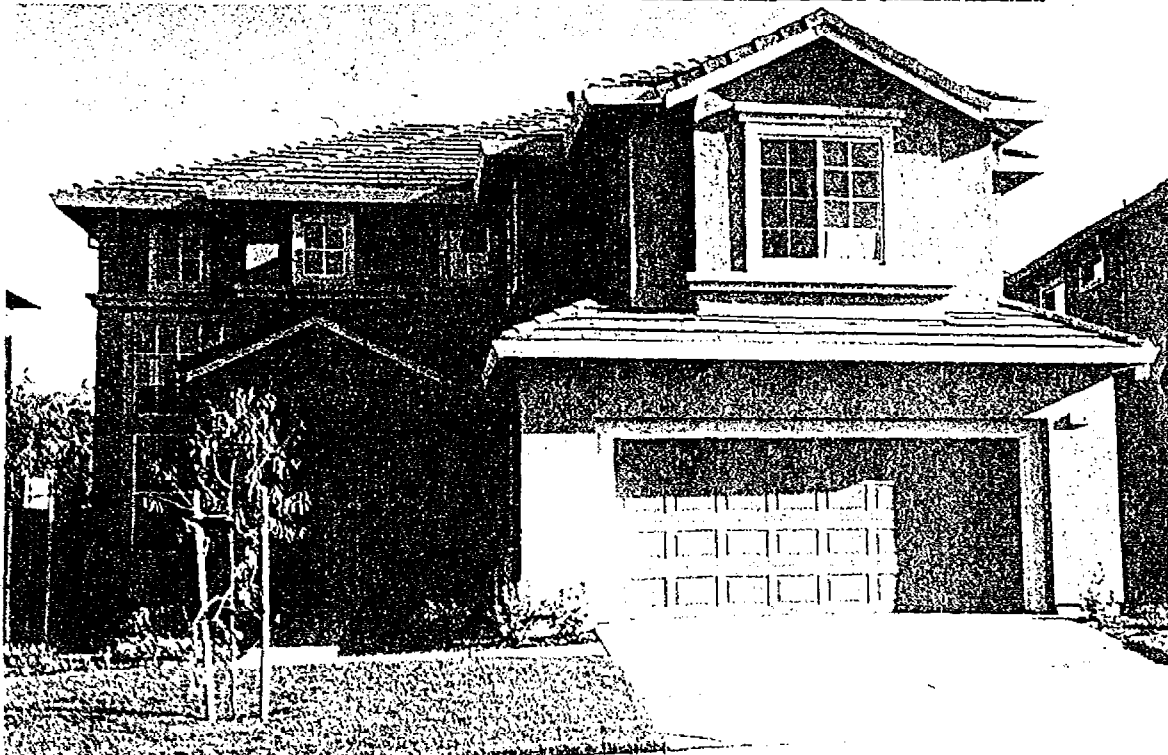
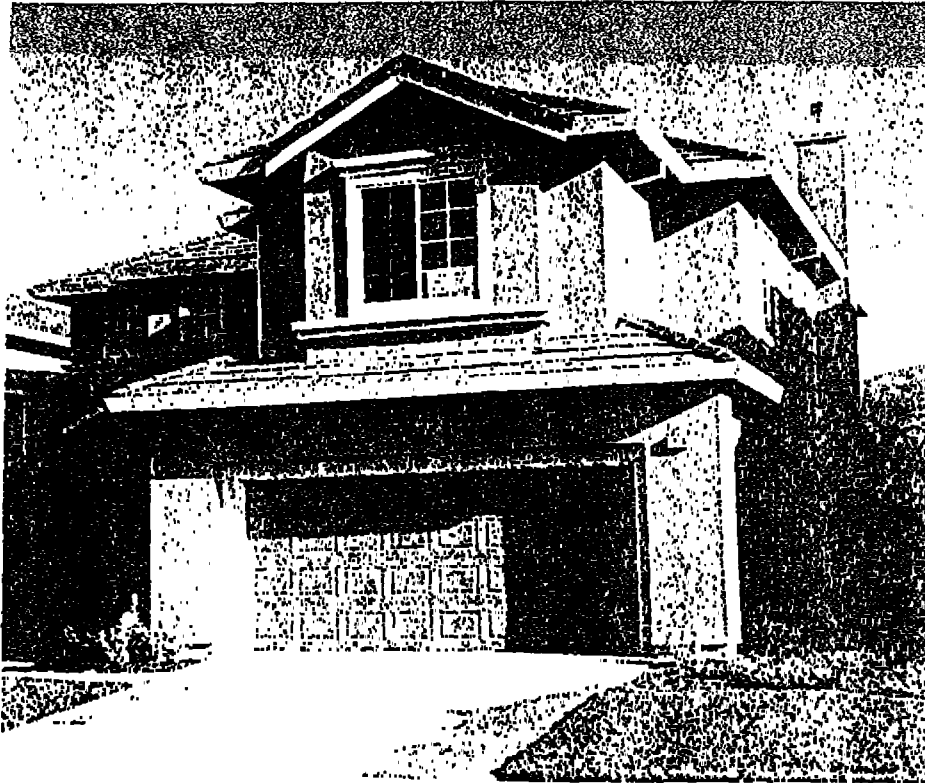


EXHIBIT D

DRAFT

RM 5/18/00

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

**RESOLUTION DENYING APPEAL FROM THE PLANNING
DIRECTOR'S APPROVAL OF VARIANCE NO. 00-180-09
AND SITE PLAN REVIEW NO. 00-130-02 AS TO
DEVELOPMENT OF TRACT 7099, LOCATED AT RUUS
ROAD AND PROPOSED EXTENSION OF PANJON STREET**

WHEREAS, on April 22, 1999, the Planning Commission held a public hearing and approved a tentative subdivision map for an 11 unit subdivision located on Ruus Road adjacent to the proposed extension of Panjon Street, which has been designated Tract 7099, after determining that the project proposed for the site is categorically exempt from the California Environmental Quality Act (CEQA); and

WHEREAS, on March 10, 2000, the Planning Director approved Variance no. 00-180-09 and Site Plan Review no. 00-130-02, which consist of a site plan for the 11-lot single family residential subdivision to be developed on Tract 7099 and a variance allowing a 5' side yard setback for a fence on Parcel A, an excess parcel consisting of a narrow strip of land approximately 125 feet by 13 feet, situated between the existing single family residence at the southwest corner of Coleridge Avenue and the extension of Panjon Street, instead of the 10 foot side yard setback otherwise required; and

WHEREAS, on March 17, 2000, Ms. Mary Byars, by and through her attorney, sent a letter appealing the Planning Director's approval of Variance no. 00-180-09 and Site Plan Review no. 00-130-02, which was referred to the Planning Commission and is incorporated by this reference; and

WHEREAS, the Planning Commission considered the appeal at a public hearing held on April 27, 2000, and sustained the action of the Planning Director, based on the evidence submitted at such hearing; and

WHEREAS, Ms. Byars has further appealed the Planning Director's action to the City Council and the City Council of the City of Hayward considered the appeal at a public hearing held on May 23, 2000.

NOW THEREFORE BE IT RESOLVED by the City Council as follows as TO the claims raised in appellant's March 17, 200 letter, based on the staff report, comments and the evidence submitted at the May 23, 2000 public hearing, which are incorporated by this reference:

A. The Council rejects each and every claim raise in the appeal and makes the following determinations:

1. The appeal claims the proposed drainage plan and provisions for removal of waste water are inadequate. The City Council finds and determines that this claim is not substantiated.
2. The appeal also claims that the application of a CEQA categorical exemption to the project is improper since the proposed project will exacerbate water drainage problems in the area and cause changes in the ecological balance of certain unspecified wildlife, and will result in the elimination of open space and quasi-public uses of the property. The City Council finds and determines as follows:
 - 2.1. This claim is untimely based on the provisions of Public Resources Code section 21167, because the categorical exemption from CEQA was adopted as to the project on April 22, 1999, more than 180 days before the filing of appellant's March 17, 2000 appeal.
 - 2.2. At the Planning Commission's April 27, 2000 hearing, Ms. Byars alleged for the first time that the property on which the property is located contains toxic or hazardous substances due to the property's prior use as a school playground which was sprayed with herbicides or pesticides in the 1960s and 1970s. The City Council finds that this claim to be untimely because it was not raised in appellant's March 17, 2000 appeal letter. In addition, the City Council also finds and determines that this claim is without merit, based on the decision in *Baird v. County of Contra Costa*, 32 Cal.App.4th 1464 (1995), which indicates that preexisting hazardous materials contamination on a project site does not constitute a significant project impact. In addition, a September 21, 1999, *Phase 1 Environmental Site Assessment* report prepared for the project proponent by ENGEO Incorporated, a geotechnical and environmental consulting firm, finds no evidence of soil or ground-water impairments associated with the use of the property on which Tract 7099 is located.
3. The appeal also claims that there is a boundary line issue and that the proposed project will therefore improperly occupy property owned by Ms. Byars and her neighbors because the appellant's wall is located three feet from her property

line. The City Council finds and determines as follows:

- 3.1. Appellant has failed to submit any evidence to support the claim that the project will be built outside of the boundary lines of Tract 7099.
- 3.2. Appellant has admitted that the wall is located wholly on her property.
4. The last claim raised alleges that appellant's privacy will be detrimentally affected because the project proposes homes which will be between 20 to 30 feet high, which will disturb the quiet enjoyment of the persons occupying adjoining homes located on adjoining properties. The City Council finds and determines as follows:
 - 4.1. Appellant has standing to raise privacy claims regarding her property but does not have standing to raise claims on behalf of other property owners.
 - 4.2. The City Council finds and determines that privacy impacts, if any, of the homes proposed for the project will be mitigated by the conditions of approval imposed on the project, which include, but are not limited to the following:
 - 4.2.1. Condition no. 21 requires the second story of the homes proposed for the project to be designed in an architecturally attractive manner, and the location of windows and balconies to be sensitive to the privacy of residents of homes on adjoining properties.
 - 4.2.2. Condition no. 22 requires the planting of the following before occupancy of any of the 11 lots contained in the project: two 15 gallon fern pine trees must be planted in the backyard of lots 10 and 11 and one fern pine tree must be planted on lots 1 through 9 near the rear fences.

B. The City Council also finds and determines with regard to Variance 00-180-09 as follows:

1. There are special circumstances applicable to the size and location of parcel A because it is the remaining property when Panjon Street is extended between Tennyson Park and the existing single family home at the southwest corner of Coleridge Avenue and Panjon Street extended.
2. The development proposal which this variance is part of is defined as a project

under parameters set forth in the California Environmental Quality Act (CEQA) Guidelines; however, it qualified for a Categorical Exemption under Section 15332 Class 32 in-fill development. Specifically it is consistent with the General Plan and Zoning Ordinance, it is under 5 acres, it does not adversely effect the habitat of endangered species, it does not cause significant adverse effects on traffic, noise, water quality or air quality, and necessary public services and utilities are available.

3. Strict application of the Zoning Ordinance deprives such property of privileges enjoyed by other properties in the vicinity under the same zoning classification. There are a number of single family residences in the neighborhood with side street yard 6-foot fences built to within 5 feet of side street property lines and the requested variance also provides for a 5 foot setback from the sidewalk.
4. The variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated, in that adequate landscaping, space for the relocated fence and open space is provided, and there will be no adverse impacts on surrounding uses.

C. The City Council of the City of Hayward further finds and determines with regard to Site Plan Review 00-130-02 as follows:

1. The design of the homes for the previously approved subdivision, as conditioned, are compatible with the adjacent single family residences, Tennyson Park and the future Boys and Girls Club, and will be an attractive addition to the neighborhood.
2. The proposed development takes into consideration physical and environmental constraints as the drainage system for the site plans was designed to accept drainage from adjacent properties to the south and proposed landscaping will integrate the project into the surrounding area. Trees will be added along the rear yard fences to form a visual screen for added privacy.
3. The project complies with the intent of City development policies and regulations, specifically design guidelines in that the interesting roof lines are proposed, the garages are secondary to the design of the dwelling, and privacy of adjacent homes is provided by sensitive window placement and a landscape buffer.
4. The development, as conditioned, will be operated in a manner determined to be acceptable and compatible with surrounding development, given that Uniform Building Code requirements must be met and a covenant must be filed

requiring property owner to maintain the drainage swale at the rear of the property so as to insure adequate drainage for the new and adjacent parcels.

5. The proposed detached single-family homes are consistent with the Zoning Ordinance, Design Guidelines and Tennyson-Alquire Neighborhood Plan Residential Development Standards.

D. Upon the basis of the aforementioned findings that the City Council hereby sustains the Planning Director's approval of Variance 00-180-09 and Site Plan Review 00-130-02 and rejects the appeal filed by Ms. Mary Byars from such approval.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2000

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward